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SUBJECT: WTO - KENYA, WITH THE EU, PREPARES FOR HONG KONG

REF: (A) STATE 211956 (B) NAIROBI 4949 (NOTAL)

Sensitive-but-unclassified. Not for release outside USG channels.

¶1. (U) This report includes an action request for State, USTR, and USDA; please see paragraph 9.

¶2. (SBU) SUMMARY: Despite the fact that it does not have a sitting Trade Minister, Kenya hopes to play a leadership role in developing a consensus among African countries at the upcoming WTO Hong Kong Ministerial, according to David Nalo, Kenya's Permanent Secretary for Trade and Industry. Nalo provided draft points on Kenya's current thinking for Hong Kong (copied in paragraph 8) and invited U.S. reaction. The points indicate that the EU has significant influence on the policy positions being developed by the Trade Ministry's technical groups, a point Nalo acknowledged. END SUMMARY.

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Kenya Wants to Lead the Africa Group  
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¶3. (U) Econ/C and Econoff met with Kenya's Permanent Secretary for Trade and Industry, David Nalo, on November

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30 to discuss U.S. and Kenyan preparations for the December 13-18 WTO Ministerial in Hong Kong. Econ/C reiterated ref A points and highlighted the need for Kenya to push for a more ambitious EU response on agriculture.

¶4. (U) Nalo explained that despite the current lack of a Trade Minister and Assistant Minister (the result of President Kibaki's November 23 dismissal of all Ministers), the Ministry's External Trade Division is continuing to draft Kenya's positions in order to bring up to speed Kenya's (likely large) WTO delegation. He offered to brief Emboffs early the following week and said the Ministry also plans to better publicize its positions before Hong Kong. [Note: We expect news at any time of President Kibaki's new Cabinet, and it is possible that former Trade Minister Kituyi will be asked to return. In any event, Nalo said that even if Kituyi is posted to a different cabinet slot, he would still

join the delegation to Hong Kong. Separately, Kitui told the Ambassador December 1 that he will definitely be leading the Kenyan delegation to Hong Kong, regardless of his status at the time. End Note.]

15. (SBU) According to Nalo, in Hong Kong, Kenya will try to organize side meetings with a few "pro-trade" African countries (naming Mauritius, South Africa, and Uganda - likely not the complete list) to encourage a consensus, based on Kenya's position, that would then be taken to the entire Africa Group. When asked about current negotiating groupings, Nalo agreed that Kenya, and other less developed countries, need to examine closely the logic of holding common positions with large, rapidly developing countries such as India and Brazil, but said that changing the current lineups would be a "delicate matter." He admitted that these large, rapidly-growing economies should be more open to exports from the less developed world.

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The EU's Influence  
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16. (SBU) As reported in ref B, in raising the issue of geographic indications, Econ/C noted that Kenya's position in favor of the EU proposal appeared at odds with Kenya's economic interests. Nalo replied that the Ministry needed a significant overhaul of its technical groups, who were often too strongly influenced by supporters of one side on an issue. He admitted that the EU, or groups or individuals promoting EU positions, are closely involved with some of the technical groups. He said that these advisors provide funding for the groups' work, but stopped just short of saying the EU is paying directly. Nalo added that it is probably too late to

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attempt any major revision of Kenya's positions ahead of Hong Kong, but he welcomed a continued dialog with U.S. officials.

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The GOK's Current Thinking for Hong Kong  
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17. (U) Nalo presented talking points, pulled together specifically for the meeting with Econ/C, (copied in para 8) of Kenya's WTO negotiating position. He noted that these were draft points and still under discussion among the Trade Ministry and its advisors. Nalo said he would welcome our comments.

18. (SBU) Begin Text of Kenya Draft Talking Points:

-- The preparations for the 6th WTO Ministerial Conference scheduled for Hong Kong are at an advanced stage and the main challenge for all members is to identify priorities to ensure a successful outcome that will set the pace for the conclusion of the DDA negotiations by 2006. It is important therefore for members to focus on resolving the outstanding difficulties before the Hong Kong Ministerial Meeting, particularly in the major areas of agriculture, non-agricultural market access, services, rules, trade facilitation and development issues. This will be crucial so as to ensure a successful outcome of the ministerial conference.

-- Kenya has been very supportive of initiatives and proposals to ensure a successful outcome that will reflect the ambition set forth under the Doha mandate and in particular the development dimension that takes into account the needs and interests of developing countries. In this respect Kenya is keen to work with other key players in the negotiations including the EU, US, G20, the G90 and others to ensure a balanced outcome in Hong Kong.

-- We acknowledge with appreciation the recent proposals by the major players in the negotiations which include the US, G20 and the E.C particularly after the Zurich meeting where selected trade Ministers exchanged views on the key Doha negotiating subjects and the challenges of striking a deal before Hong Kong. The EU on its part has indicated that all participants have domestic constraints and political limitations and shall therefore negotiate on the basis of the mandate decided by the Council of Ministers.

-- On the other hand the US has given a conditional offer to eliminate all tariffs, subsidies and other barriers to free flow of goods and services provided other members are prepared to make significant contributions. The target of this offer is to create new trade opportunities in manufactured goods and services comparable to those created in agriculture.

-- The US offer is similar to the recent EU contribution on agriculture negotiations which is conditional to certain targets being met in other areas of the Doha Work programme and specifically a higher ambition for NAMA and benchmarking for Services. However despite the difficult political circumstances that both the EU and the US face, they both have a responsibility of ensuring that the outcome of the Hong Kong meeting takes into account the specific concerns of developing and least developed countries. In this respect Kenya calls upon the US in particular to continue providing the necessary leadership during the preparatory process leading to the Ministerial conference.

-- As a country Kenya is particularly concerned that on the overall there has been a predominant focus on the two major issues of Agriculture and Industrial Tariffs, leaving many of the important issues of interest to developing countries on the sidelines. This has led to the process and pace of the negotiations largely being dependent on the position of the major players, and in

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particular the US and EC. Many developing countries are concerned at this state of the negotiations, as it marginalizes the issues of interest to them as well as their involvement in the negotiations process. Some of the key issues include;

-- On Agriculture, the critical issue is agreeing on the structure of the tiered formulae to be used for the tariff reductions and how this will impact on the different Members. A resolution of this issue is necessary to unlock possible movement on the issues of domestic support and export competition pillars. In addition specific concerns for developing countries which include, special and differential treatment provisions, the question of preference erosion, Special Products, Special Safeguard Mechanism, implementation periods for commitments and increased market access through the expansion of tariff rate quotas, cotton initiative and commodities should be adequately addressed in the negotiations.

-- On NAMA there is need to resolve the formula to be used for tariff reductions and the treatment of unbound tariffs to avoid a situation where developing countries could assume a disproportionate burden of the tariff reduction commitments. On average, developing countries have high tariff rates compared to the developed countries, and hence the potential impacts of any tariff reduction formula on their economies will need to be assessed. In this respect number of flexibilities for developing countries should be factored into any final framework on tariff reductions to incorporate longer implementation periods, exemption from applying formula

cuts, provision to maintain some unbound tariffs and the full exemption of least-developed countries from undertaking any reduction commitments. The key concern for Kenya is the treatment and the flexibilities to be accorded to countries that have bound less than 35% of their tariff lines and in particular with regard to the conditions attached.

-- On Services the general assessment is that the offers on the negotiating table are unsatisfactory in terms of quality, including the sectors and modes of supply covered by the offers. The recent proposals are calling for additional modalities to raise the coverage, quality and number of participants in the services negotiations including complimentary approaches that would establish mandatory benchmarks for all Members to meet in terms of the offers. However in Kenya's view the approach to be agreed must ensure that developing countries will only undertake liberalization commitments which are consistent with their development needs as provided for in the GATS and the negotiating guidelines.

-- The Services negotiations should equally focus on specific measures to strengthen the capacity of developing countries in the supply of services and their participation in international trade. Such measures should include ways and means to increasing the competitiveness of their services sectors, providing them with access to distribution channels and information networks in developed country markets, and for developed countries to undertake increased commitments on temporary mobility under mode 4.

-- The general assessment on Trade Facilitation is that these negotiations are 'progressing well and on schedule'. Consequently, the expectation is that the Hong Kong Ministerial could result in a broad agreement on the main elements on trade facilitation, and pave the way for the finalization of the relevant legal instrument by 2006. However WTO members should take stock of the negotiations and the implications of a possible agreement on trade facilitation. This will give a clear assessment of the capacity of different Members to implement new commitments on trade facilitation, special and differential treatment provisions, as well as the implication of a dispute settlement process that is likely to be an integral part of the agreement.

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-- On Development issues it is important to recall that the Doha mandate and the July Package provide that the interests and needs of developing and least developed countries should be placed at the core of the DDA negotiations and also their outcome. In this regard the Special and Differential Treatment provisions should be strengthened to make them more precise, effective and operational", through increased market access for developing countries, balanced rules as well as the provision of capacity building and technical assistance to enable developing countries implement both Uruguay Round Agreements and results of the Doha Round.

-- On TRIPS and Public Health, Kenya is keen to have a speedy adoption of an amendment to implement the 30th August, 2003 Decision on TRIPS and Public Health in line with the African Group proposal which is widely supported by a large majority of developing countries. It is therefore important for members to intensify consultations to complete the necessary amendment before Hong Kong. The amendment should address the difficulties regarding the implementation of compulsory licensing measures and also integrate the 30th August Decision into the TRIPS agreement in a manner that will guarantee the interests of developing countries are taken into account. The issue of access to essential drugs that are subject

to higher prices due to the stronger patent regime resulting from the TRIPS agreement, for diseases other than the HIV/AIDS, malaria and tuberculosis should provide the motivation for a more dynamic resolution of this matter. In this regard the issue of incorporating the Chairman's statement in the amendment of the TRIPS Agreement remains a genuine concern for many developing countries including Kenya.  
End Text.

¶9. (U) Action request: Post would appreciate any comments or questions from Washington agencies on Kenya's draft points to deliver to Ministry of Trade officials. Econ/C and Econoff meet again the morning of December 5 with Nalo and the technical-level officials who are working on finalizing Kenya's positions going into Hong Kong.

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Comment  
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¶10. (SBU) Our reading of Kenya's draft points indicates an obvious slant towards an EU perspective, despite our good relations with Ministry of Trade officials, including former Minister Kituyi. Kenya's trade officials have a fairly good grasp of the issues at hand, and we believe Kenya wants to see a successful Hong Kong outcome. However, to date, we have not seen a willingness by Kenyan officials to call on the EU to improve its offer on agriculture, and without Kenya's leadership, it is unlikely any larger African grouping will do so either.

BELLAMY